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TELEVISION COMPANIES
C-SPAN

Bruce Collins
Vice President and General Counsel

May 28, 1996

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992; CS Docket No. 96-60

Dear Mr. Caton:

Enclosed are 11 copies of National Cable Satellite Corporation's Reply Comments in the above-referenced proceeding.

Respectfully Submitted,

NATIONAL CABLE SATELLITE CORP.

By: _____
Bruce D. Collins, Esq.
Corporate Vice President and
General Counsel

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections of the Cable	)	
Television Consumer Protection and	)	
Competition Act of 1992:	)	CS Docket No. 96-60
	)	
Rate Regulation	)	
	)	
Leased Commercial Access	)	

REPLY COMMENTS OF C-SPAN AND C-SPAN 2
(National Cable Satellite Corporation)

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REPLY COMMENTS OF C-SPAN AND C-SPAN 2
(National Cable Satellite Corporation)

I. INTRODUCTION

C-SPAN and C-SPAN 2 (the "C-SPAN Networks") are full-time satellite delivered public affairs television programming services available primarily via cable television, and devoted entirely to information and public affairs, including the live gavel-to-gavel coverage of the proceedings of the U.S. House of Representatives (on C-SPAN), the U.S. Senate (on C-SPAN 2) and a variety of other events at public forums around the country and the world. The C-SPAN Networks are produced and distributed by the National Cable Satellite Corporation ("NCSC"), a non-profit and tax-exempt District of Columbia corporation.

In these Reply Comments in the above-referenced rulemaking on Leased Commercial Access[1] we respond to the some of the comments of others and restate our position that any

[1] *Order on Reconsideration of the First Report and Order and Further Notice of Proposed Rulemaking* released March 29, 1996.

change in the current rate formula would be harmful to us, and would not ultimately be in the public interest.

II. THE COMMISSION SHOULD DISCOUNT THE ARGUMENTS OF THOSE WHO MISUNDERSTAND THIS RULEMAKNG; THE ISSUE IS *COMMERCIAL* LEASED ACCESS, NOT *ANY* ACCESS

A. C-SPAN's Only Outlet Should Not Be Handed Over to Those Who Already Have One

Many commenters would have the Commission believe that the commercial leased access provision of the statute is a catch-all provision designed to satisfy the demands of any programmer for access to a cable system for any purpose. Such is simply, and clearly, not the case. Congress, in drafting Section 612 of the 1984 Cable Act, intended a much narrower purpose -- to assure a diversity of information sources to cable subscribers. Nor is there any language in the statute or the legislative history conferring any special status on particular programmers for access,[2] yet that is precisely the underlying premise of many special pleaders in this Rulemaking. They would have the Commission grant credence to their claims to leased access channels (in defiance of the Statute) on the basis of who they are, rather than on the basis of their contribution to the public interest.

We are especially concerned that if this line of reasoning were to prevail, the C-SPAN Networks would lose significant carriage on cable systems in favor of programmers never intended by Congress to receive such access, and even more troubling, in favor of programmers who already have a government-mandated means of reaching their audiences.

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[2] Excepting, of course, programmers unaffiliated with cable MSOs, and the two narrowly drawn statutory provisions for minority and educational programmers.

For example, the low power television operators clearly have their status as broadcast licensees in mind in their argument for preferential treatment among claimants for leased access channels.[3] The irony here is palpable. If their point of view were to carry the day at the Commission, the result would be that C-SPAN and C-SPAN 2 would be bumped from cable systems (our *only* outlet) so that LPTV operators could gain a *second* outlet.

The public television stations would have the Commission commit the same disservice. The Association of America's Public Television Stations and the Public Broadcasting Service, already benefitting from broadcast licenses and must carry status on cable systems, argue for lower leased access rates because such would "offer [them] more opportunities to distribute a wide range of additional educational and community programming and related services..."[4] In other words, they would have the Commission cause the currently-operating C-SPAN Networks to be dropped from our only outlet in favor of their yet-to-be-produced 'programming and related services' that presumably will be delivered by commercial leased access channels rather than by their over-the-air broadcast channels. We wonder whether that result is one Congress intended when it drafted Section 612.

B. Commercial Leased Access is Not a Second Bite at the Apple for LPTV; Nor a Back Door for Public Access Programmers

The Commission should keep its analysis in this rulemaking on the issue at hand: commercial leased access. Congress had a narrow purpose in enacting Section 612, and the

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[3] Comments of *Community Broadcasters Association*, Para 18

[4] Comments of the *Association of America's Public Television Stations and the Public Broadcasting Service*, at 3.

Commission should keep that narrow purpose in mind in giving effect to it. It is certainly the case that some LPTV operators and public access programmers have been disappointed in their ventures, and they have certainly made their stories known to the Commission. It does not follow, however, that Congress's notion of commercial leased access should be distorted in order to accommodate them. The reasonableness of the maximum rate for a leased access channel is determined by the market, not the budgets of disappointed programmers. A commercial rate is not unreasonable simply because some can not afford to pay it. Congress created LPTV licenses for community broadcasters; it created the PEG channel regulatory scheme for public access programmers; and it created commercial leased access for unaffiliated programmers willing and able to pay to reach an audience. While different kinds of programmers may choose to move from one regulatory venue to another, they can not expect to use the rationale for one as a justification for the other. The emphasis in this Rulemaking is *commercial* leased access, and all the demands of all special pleaders should be evaluated in that commercial context.

III. ANY DROP IN THE COMMERCIAL LEASED ACCESS RATE, ESPECIALLY THE PART TIME RATE, WILL SERIOUSLY HARM THE C-SPAN NETWORKS

We restate our view that any drop in the maximum rate a cable operator may charge for a leased access channel will lead to carriage losses for C-SPAN and C-SPAN 2. The comments submitted so far have highlighted an additional concern with the calculation of the rates that may be charged for leased access on a part-time basis. We agree with the NCTA that a mere proration of the Commission's proposed cost/market formula "will yield entirely

unreasonable rates...ranging from pennies to just a few dollars an hour."[5] Even at the current maximum rate the C-SPAN Networks have been preempted from hour to hour by locally oriented business programming, much to the detriment of our ability to maintain politically balanced programming, much less the full integrity of our long-form format.[6] We therefore urge the Commission not only to retain the current rate mechanism, but also to permit operators to set part-time leased access rates that at least match the commercial rates charged by other media outlets, including those charged by the cable operator for local advertising spots.

IV. THE COMMISSION SHOULD ASSESS THE STATE OF CABLE's PROGRAMMING DIVERSITY THE SAME WAY IT ASSESSED DIVERSITY IN BROADCASTING -- CONSIDER THE VIEWERS' CHOICES

In its Notice the Commission seems rightfully concerned about properly addressing the issue of the diversity of voices and sources of programming on cable systems, as mandated by Congress. We urge the Commission to take the same approach toward the assessment of the existence of diversity here as it did in the broadcast context early last year. When it reviewed its own regulations governing broadcasting, the Commission acknowledged that its past practice of assessing media diversity solely in terms of broadcast outlets of the same kind "*may be too narrow in today's world*, in which the American public can receive home delivered video programming from a variety of outlets. Under such circumstances, *it makes less and less sense to regulate a market* on the grounds of ensuring diversity, without taking

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[5] Comments of the *National Cable Television Association*, at 32.

[6] Comments of *C-SPAN and C-SPAN 2 (National Cable Satellite Corporation)*, at 9.

into account whether there is an available diverse array of non-broadcast media."(emphasis supplied)[7] The Commission should take the same common sense approach in this Rulemaking. Here, the Commission should do what cable subscribers across the country do every day: surf through the channels to see the variety of programming they have at their fingertips from a variety of sources. Then it should ask, will a narrow implementation of Section 612 improve that diversity? Will it serve the public's interest? We believe it will not.

V. CONCLUSION

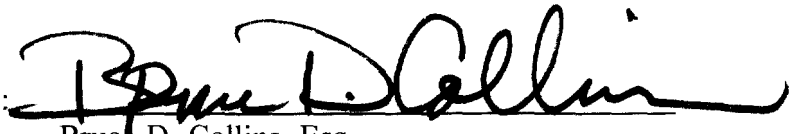
For the foregoing reasons we respectfully urge the Commission to conclude that the current maximum rate charged by cable operators for commercial leased access to their systems is a reasonable rate, and that cable operators be permitted to set part-time rates for such access that are competitive with other media outlets. Any other conclusions will lead to direct and significant losses of carriage for the C-SPAN Networks -- a result that will lead to

[7] *Further Notice of Proposed Rulemaking,* In the Matter of Review of the Commission's Regulations Governing Television Broadcasting, MM Docket No. 91-221, FCC 94-322, released January 17, 1995, para. 54.

less diversity of programming on cable systems, and will be a disservice to the public interest.

Respectfully submitted,

NATIONAL CABLE SATELLITE CORPORATION,
d/b/s C-SPAN

By: 

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